



Intellectual Property Rights and Indigenous Peoples

Emerging Issues in Research Ethics
Hotel Jen, Pasay City
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Outline

1. Concepts on intellectual property rights (IPR)
2. The Interface of the IPR and the Indigenous Peoples (Emerging Issues)

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Intellectual Property Office of the Philippines

- Lead government agency in the field of intellectual property created in 1998 (Republic Act No. 8293)
- Register patents, trademarks and accept deposits and registration of copyrighted works
- Administratively adjudicate cases affecting intellectual property rights
- Coordinate with other government agencies and institutions on matters related to intellectual property rights



Intellectual

- Creations of the mind: innovations, inventions, literary and artistic works, trademarks, industrial designs

Property

- Dominion, control and ownership
- Use and exclusion of others
- Fruits and recovery
- Disposal
- Intangible property



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➤ Intellectual property right as a constitutional and statutory right

➤ 1987 Constitution, Art. XIV, Sec 13.

The State shall protect and secure the **exclusive rights** of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations, particularly when **beneficial to the people**, for **such period as may be provided by law**.

➤ The Intellectual Property Code of the Philippines (IP Code), Republic Act No. 8293

*For new plant varieties (Philippine Plant Variety Protection Act of 2002, Republic Act No. 9168)

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➤ Universal Declaration of Human Rights

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

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•Key principles on IPR

- IPR is given to enable the public to have access to intellectual creations which are beneficial and can promote the common good
- Incentives given on innovation, invention, and artistic creation and performances
- Limitations and exceptions

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Section 4 of the IP Code

The term "intellectual property rights" consists of

- Copyright and related rights
- Trademarks and Service Marks
- Geographic Indications
- Industrial Designs
- Patents
- Layout-Designs (Topographies) of Integrated Circuits
- Protection of Undisclosed Information

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➢Copyright and Related Rights (**From the moment of creation of the original work**)

- Examples are original books, pamphlets, articles, and other writings; periodicals and newspapers; lectures, sermons, and addresses; musical compositions, with or without words; illustrations; drawings; audio-visual works; photographic works; computer programs; and other literary, scholarly, scientific, and artistic works



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•Copyright is a bundle of rights (i.e. reproduction, communication to the public) given to the authors of artistic and literary creations during lifetime plus 50 years (economic rights)

•Copyright includes moral rights: right of attribution (perpetual), against alteration or distortion (period of protection is the same as economic rights). Unlike the economic rights, moral rights cannot be the subject of a license.

•Related Rights refer to the rights given to performers on their performances, producers of sound recordings and broadcasting organizations. They are given similar exclusive rights for 50 years from date of performance/recording and 20 years from date of broadcast

•No copyright on government works (work created by an officer or employee of the Philippine Government or any of its subdivisions and instrumentalities, including government-owned or controlled corporations, as part of regularly prescribed official duties)

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➢Trademarks – **visible signs** capable of distinguishing goods and services (service mark) of an enterprise

- Term of protection is ten (10) years and can be renewed perpetually

➢Geographic Indications – identify the good as originating from a territory where a given quality, **reputation** or characteristic of the good is essentially attributed to its **geographic origin** (i.e. Guimaras Mango, Davao Pomelo)

➢Currently, geographic indications are protected under the laws on trademarks

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Patents – right given by the government to an inventor to exclude others from the use and commercial exploitation of the invention in exchange for the inventor's disclosure of the invention.

- Inventions and innovations (product, process, and improvement)
 - i.e. New medicines and the process of manufacturing and formulating the new medicines
- Any technical solution of a problem in any field of human activity
- New (novelty), has inventive step (not obvious), and industrially applicable
- Patent protection is given after passing formality and substantive examination
- Term of protection is 20 years from filing date

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- Industrial Designs (as distinguished from copyright) – composition of lines or colors or any three-dimensional form, that gives a special appearance to and can serve as a pattern for an industrial product or handicraft
 - Novelty and originality
- Layout-designs (topographies) of integrated circuits
 - Originality
- Protection of undisclosed information (trade secret)

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Intellectual Property Rights



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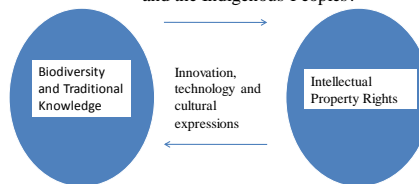
The Indigenous Cultural Communities as an Emerging Issue on Intellectual Property

- Over 110 indigenous cultural communities
 - Rich in indigenous knowledge systems and practices including traditional knowledge associated with genetic resources and traditional cultural expressions
- Legal and policy mechanisms to safeguard, preserve and protect the intellectual creations of the indigenous cultural communities
 - Indigenous Peoples Rights Act
 - National Cultural Heritage Act

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Is there an interface between the IPR and the Indigenous Peoples?



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Comparison of IPR and the Indigenous Peoples' Community Intellectual Rights

Intellectual Property Rights	Community Intellectual Rights
<ul style="list-style-type: none"> • Covered by the Intellectual Property Code of the Philippines • Individual/Juridical persons (corporation) • Limited term of protection • Subject matter (inventions, visible signs, artistic and literary creations) • Licensing agreements 	<ul style="list-style-type: none"> • Covered by the Indigenous Peoples Rights Act of 1997 • Community • Past, present and future manifestations • Subject matter (All manifestations of cultures, science and technology, genetic resources, languages, music, dances) • Free and prior informed consent

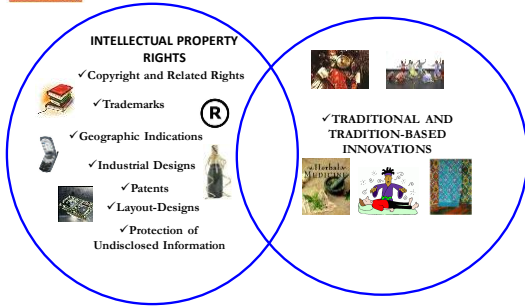
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Interface of IPR with the Indigenous Peoples

1. Similar principles of giving control or exclusive rights (Indigenous Peoples Rights Act (IPRA) and IP Code provisions)
2. Positive correlation with modern therapeutic use (new drugs and medicines) and traditional medicines or new artistic works from traditional works
3. Documentation of traditional knowledge can enhance examinations of IPR applications
 - ✓ Essence of providing IP protection is the recognition of the contribution to knowledge and creation
4. Disclosure requirements in the IPR application may prevent misappropriation and trigger access-benefit sharing mechanisms (Joint IPOPHL-NCIP Administrative Order)

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Thank you and God bless!

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